

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL J. CHARTIER,

Plaintiff-Appellee,

v

AUTOMOBILE CLUB INSURANCE
ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED

January 12, 2006

No. 257301

Bay Circuit Court

LC No. 03-003069-NF

Before: Hoekstra, P.J., and Neff and Davis, JJ.

HOEKSTRA, P.J., (*concurring*).

Regarding plaintiff's entitlement to a van, based upon my review of the circumstances presented in this case, I concur in the conclusion that the van is "reasonably necessary" and, thus, an "allowable expense" under MCL 500.3107(1)(a) upon being incurred by plaintiff; however, I write separately because my reasons differ somewhat from those expressed in the majority opinion.

Respectfully, unlike the majority, I find *Davis v Citizens Ins Co of America*, 195 Mich App 323; 489 NW2d 214 (1992) not particularly helpful in resolving this case. The analysis of the majority in *Davis* regarding why the plaintiff was entitled to a van as an allowable expense under MCL 500.3107(1)(a) is a mixture of fact specific circumstances relating to the transportation limitations in the county where the plaintiff lived coupled with a reference without analysis to "vacations," and reliance on the plaintiff's treating physician's opinion that a van was necessary so that plaintiff could enjoy "the independence to go to work." *Id.* at 327-328. Further, I note that while *Davis* held that under the circumstances the purchase of a van was reasonable and necessary, the analysis failed to relate the reasonableness and necessity of it to the "care, recovery, or rehabilitation" of the injured person as required by MCL 500.3107(1)(a). Consequently, I do not believe that *Davis* can be read to hold that paraplegics are entitled to a van as an allowable expense under MCL 500.3107(1)(a) generally, nor do the circumstances present in *Davis* compel a similar result in this case.

Nevertheless, I do conclude that the facts in this case support plaintiff's claim. Plaintiff was injured in 1979. Afterward he purchased and defendant without dispute modified a number of used vans for plaintiff's general use. In 2000, plaintiff graduated from college and obtained his present employment, which requires that he travel to, from, and during work. Also, since 2000, he has experienced a painful degenerative condition in his neck and shoulders that is

brought on in part by the strain of getting in and out of the stock vans that have been adaptively modified by defendant over the years since plaintiff's injury. Because of this condition his physician and an occupational therapist, to whom plaintiff was referred by defendant for evaluation, recommended a specially designed and equipped van. In particular, the recommendation of the occupational therapist was that the van itself be structurally modified from that of an ordinary van by having a raised roof or lowered floorboard so that plaintiff could access it without experiencing the strain that has contributed to his neck and shoulder problems. Although maintaining that it would modify a van purchased by plaintiff as it had in the past, defendant declined to purchase and modify a van consistent with these recommendations. This action was commenced after defendant's denial.

Rehabilitation required by MCL 500.3107(1)(a) is defined as "to restore or bring to a condition of good health, ability to work, or productive activity." *Hamilton v AAA of Michigan*, 248 Mich App 535, 546; 639 NW2d 837 (2001), quoting *Random House Webster's College Dictionary* (1997). On the facts of this case, I conclude that the specially modified van is reasonable and necessary for plaintiff's rehabilitation because of his unique medical condition and the need that condition created for a van with a raised roof or lowered floorboard that would allow him to continue being employed without causing aggravation of the degenerative condition in plaintiff's neck and shoulders that results in part from using conventional vans for transportation. In other words, a specially modified van is reasonable and necessary in light of plaintiff's current medical condition resulting from his automobile accident injury to rehabilitate him so that he can be restored to a healthy condition and have the ability to work and be productive.

Further, I concur and join with the majority regarding whether the expense was incurred.

/s/ Joel P. Hoekstra